Eric I. Abraham (eabraham@hillwallack.com)
Christina Saveriano (csaveriano@hillwallack.com)
HILL WALLACK LLP
21 Roszel Road
Princeton, NJ 08540
(609) 734-6358 (telephone)

Of Counsel
William A. Rakoczy (wrakoczy@rmmslegal.com)
Deanne M. Mazzochi (dmazzochi@rmmslegal.com)
Rachel Pernic Waldron (rpernicwaldron@rmmslegal.com)
RAKOCZY MOLINO MAZZOCHI SIWIK LLP
6 West Hubbard Street, Suite 500
Chicago, Illinois 60654
(312) 222-6301 (telephone)

Attorneys for Defendants Sandoz Inc. and Momenta Pharmaceuticals, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TEVA PHARMACEUTICALS USA, INC., TEVA PHARMACEUTICAL INDUSTRIES LTD., AND TEVA NEUROSCIENCE, INC.,	Civil Action No. 17-cv-00275-FLW-DEA
Plaintiffs,	**HIGHLY PROPRIETARY - FILED UNDER SEAL**
v.	*Document Filed Electronically*
SANDOZ INC. AND MOMENTA PHARMACEUTICALS, INC.,	Motion Return Date: February 21, 2017 Oral Argument Requested
Defendants.	

REPLY BRIEF OF DEFENDANTS SANDOZ INC. AND MOMENTA PHARMACEUTICALS, INC. IN SUPPORT OF THEIR MOTION TO TRANSFER

HIGHLY PROPRIETARY -
FILED UNDER SEAL

TABLE OF CONTENTS

I. INTRODUCTION. 1

II. FACTS ARISING SINCE THIS MOTION TO TRANSFER WAS FILED ON JANUARY 26, 2017. 2

A. Teva Voluntarily Dismissed Necessary Party Momenta from this Suit. 2

B. Teva Recently Filed a Related Case in the District of Delaware, In Which Defendants Have Recently Counterclaimed to Add the ‘775 Patent. 2

C. Mylan Has Moved to Transfer Its N.D.W. Va. ‘775 Patent Case to Delaware. 3

D. Synthon Is Moving to Transfer Its S.D.N.Y ‘775 Patent Case to Delaware. 3

E. Amneal Has Requested Permission from the E.D.N.Y. to Move to Transfer Its ‘775 Patent Case to Delaware, and Has Also Filed a Declaratory Judgment Action in Delaware. 3

F. Dr. Reddy’s Has Moved to Transfer Its D.N.J. ‘775 Patent Case to Delaware. 4

III. ARGUMENT. 4

A. Momenta Is a Necessary Party, But There Is No Personal Jurisdiction over Momenta in New Jersey. 4

B. Teva’s Assertion that the Delaware Litigation Is Completed Is Wholly Inaccurate; Teva Just Filed Suit in Delaware on December 19, 2016, and Certain Defendants Have Recently Counterclaimed to Add the ‘775 Patent to that Suit. 5

C. Given That Each Defendant Is Attempting To Transfer Its ‘775 Patent Case To Delaware For Potential Consolidation, Transfer To Delaware Will Prevent Highly Duplicative Litigation And The Possibility Of Inconsistent Results, As Well As Increase Witness Convenience. 6

D. The Multiple ‘775 Patent Cases Could Be Easily Consolidated if the Delaware Court Chooses to Do So; Teva’s Joinder Argument Is a Red Herring. 8

E. Teva’s Other Misleading and Erroneous Points Should Be Given No Weight. 10

IV. CONCLUSION. 11

TABLE OF AUTHORITIES

CASES

A.S. v. SmithKline Beecham Corp.,
769 F.3d 204 (3d Cir. 2014) 9

Amneal Pharm. LLC et al. v. Teva Pharm. USA, Inc. et al.,
C.A. No. 17-cv-00074-GMS (D. Del.) 4

Auto-Dril, Inc. v. Canrig Drilling Tech., Ltd.,
No. 15-cv-00096, 2015 WL 12780793 (W.D. Tex. June 29, 2015) 10

Cellport Sys., Inc. v. BMW of N. Am, L.L.C.,
No. 14-cv-01631-PAB-KLM, 2014 WL 6910293 (D. Col. Dec. 9, 2014) 10

CIBC World Mkts., Inc. v. Deutsche Bank Sec., Inc.,
309 F. Supp. 2d 637 (D.N.J. 2004) 7

Del. Riverkeeper Network v. Del. River Basin Comm'n,
No. 10-5639 (AET), 2011 WL 3882503 (D.N.J. Sept. 2, 2011) 5

DietGoal Innovations LLC v. Wegmans Food Mkts., Inc.,
Nos. 13-cv-154, 14-cv-143, 2014 WL 2561222 (E.D. Va. June 6, 2014) 9

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011) 11

In re Bear Creek Techs., Inc., ('722) Patent Litig.,
858 F. Supp. 2d 1375 (J.P.M.L. 2012) 10

In re EMC Corp.,
677 F.3d 1351 (Fed. Cir. 2012) 8

Lewis v. Lipocine Inc., Nos. 16-4009-BRM-LHG,
16-4067-BRM-LHG, 2016 WL 7042075 (D.N.J. Dec. 2, 2016) 9

Liggett Grp. Inc. v. R.J. Reynolds Tobacco Co.,
102 F. Supp. 2d 518 (D.N.J. 2000) 7

Norman IP Holdings, LLC v. Lexmark Int'l Inc.,
Nos. 12-cv-508, 11-cv-495, 2012 WL 3307942 (E.D. Tex. Aug. 10, 2012) 9

*Platinum Partners Value Arbitrage Fund, L.P. v. TD Bank,
N.A.*, No. 10-6457, 2011 WL 3329087 (D.N.J. Aug. 2, 2011) 7

Rohm & Haas Co. v. Mobil Oil Corp.,
525 F. Supp. 1298 (D. Del. 1981) 9

HIGHLY PROPRIETARY - FILED UNDER SEAL

Salem Steel N. Am., LLC v. Shanghai Shangshang Stainless Steel Pipe Co., No. 08-4827 (DMC), 2009 WL 2169243 (D.N.J. July 21, 2009) 9

Teva Pharm. USA, Inc. et al. v. Dr. Reddy's Labs. et al., C.A. No. 17-cv-00517-FLW (D.N.J.) 4

Teva Pharm. USA, Inc. et al. v. Mylan Pharm. Inc. et al., C.A. No. 17-cv-00007-IMK (N.D.W. Va.) 3

Teva Pharmaceuticals USA, Inc. et al. v. Synthon Pharmaceuticals Inc. et al., C.A. No. 17-cv-00345-LGS (S.D.N.Y.) 3, 4

Unified Messaging Sols., LLC v. United Online, Inc., No. 13-C-00343, 2013 WL 1874211 (N.D. Ill. May 3, 2013) 10

STATUTES

28 U.S.C. § 1407 10

35 U.S.C. § 299 .... 8, 9, 10

RULES

Fed. R. Civ. P. 42 .... 8, 9, 10

Fed. R. Civ. P. 7.1 11

I. INTRODUCTION.

Teva's Opposition (D.I. 25) to Sandoz's Motion to Transfer (D.I. 7) ("Teva's Opposition" or "Teva Opp. Br.") reveals, by omission, the fundamental flaws in Teva's position that this case belongs in the District of New Jersey.

First, as shown in the concurrently-filed letter as requested by the Court (D.I. 40), recently-dismissed Momenta Pharmaceuticals, Inc. ("Momenta") is a necessary party in this litigation because it cannot protect its substantial interests in this litigation if it is absent; as such, transfer to Delaware is warranted for that reason alone. (Relatedly, Teva's characterization of Momenta's Delaware declaratory judgment action—filed where it is incorporated and where related litigation on this patent is pending—as forum-shopping rings hollow given that Momenta did not file its action until *after* Teva chose to voluntarily dismiss Momenta from this suit.)

Second, Teva's Opposition tellingly contains no mention—much less a complete and forthright discussion—of the *currently-pending* suit brought by Teva in the District of Delaware over a fifth glatiramer acetate ("GA")-related method patent. Similarly, Teva also does not discuss the status of the four other patent suits involving U.S. Patent No. 9,155,775 ("'775 patent") that Teva has filed in various districts. When all of these co-pending actions are properly considered—rather than ignored, as Teva did—it is plain that judicial economy would be greatly enhanced by transferring this case to the District of Delaware.

Third, Teva's argument that it filed so many different suits because joinder would be impossible is a red herring—Rule 42 is much more permissive than Rule 20, and Courts routinely consolidate actions for purposes of discovery in order to promote judicial economy and efficiency, and for convenience of witnesses and parties. As such, potential consolidation is a sound basis for transfer to Delaware.

Thus, for at least the reasons set forth in Sandoz's opening brief and herein, transfer of this case to the District of Delaware is proper and in the interest of justice.

II. FACTS ARISING SINCE THIS MOTION TO TRANSFER WAS FILED ON JANUARY 26, 2017.

As described herein, several pertinent facts have arisen since this Motion to Transfer was filed on January 26, 2017.

A. Teva Voluntarily Dismissed Necessary Party Momenta from this Suit.

On January 26, 2017, Momenta filed a Motion to Dismiss for Lack of Personal Jurisdiction (D.I. 9), along with the instant Motion to Transfer. On January 31, 2017—rather than responding to Momenta's assertion that New Jersey lacks personal jurisdiction over it—Teva instead chose to voluntarily dismiss Momenta without prejudice from this suit. (D.I. 19). As discussed in today's concurrently-filed letter to the Court, Momenta is a necessary party to this suit—thus, Teva's choice to dismiss Momenta from this suit renders transfer necessary.

B. Teva Recently Filed a Related Case in the District of Delaware, In Which Defendants Have Recently Counterclaimed to Add the '775 Patent.

As noted in Sandoz's opening brief (but glossed over in Teva's Opposition), Teva filed suit on December 19, 2016 in the District of Delaware over a fifth GA-related, Orange Book-listed patent (U.S. Pat. No. 9,402,874—the "'874 patent") against Sandoz and Momenta, along with Amneal, Synthon, Mylan, and DRL ("the 2016 Delaware Case"). (*See* Opening Br. at 4; Ex. A, *Teva Pharm. USA, Inc. et al. v. Doctor Reddy's Labs., Ltd. et al.*, C.A. No. 16-cv-01267-GMS (D. Del.), Docket Report)). The 2016 Delaware Case is currently pending, and is assigned to Judge Sleet. (*Id.*).

On February 8, 2017, Mylan filed its answer and counterclaims in the 2016 Delaware Case, adding the '775 patent to the case by counterclaim. (Ex. A, 2016 Delaware Case, Docket

Report at D.I. 14).

Earlier today, February 10, 2017, Sandoz also filed its answer and counterclaims in the 2016 Delaware Case, also adding the '775 patent to the case by counterclaim. (Ex. A, 2016 Delaware Case, Docket Report at D.I. 20).

C. Mylan Has Moved to Transfer Its N.D.W. Va. '775 Patent Case to Delaware.

On January 17, 2017, Teva sued Mylan[1] in the Northern District of West Virginia over the '775 patent. (*See* Opening Br. at 5; Ex. B, *Teva Pharm. USA, Inc. et al. v. Mylan Pharm. Inc. et al.*, C.A. No. 17-cv-00007-IMK (N.D.W. Va.), Docket Report).

On February 3, 2017, Mylan informed the Court that it would be moving to transfer the case to the District of Delaware (Ex. C, Feb. 3, 2017 Mylan Letter to Hon. Irene M. Keeley); on February 8, 2017, Mylan filed its motion to transfer the case to the District of Delaware. (Ex. D, Feb. 8, 2017 Mylan Brief in support of Motion to Transfer to the District of Delaware).

D. Synthon Is Moving to Transfer Its S.D.N.Y '775 Patent Case to Delaware.

Also on January 17, 2017, Teva sued Synthon in the Southern District of New York over the '775 patent. (*See* Opening Br. at 5; Ex. E, *Teva Pharm. USA, Inc. et al. v. Synthon Pharm. Inc. et al.*, C.A. No. 17-cv-00345-LGS (S.D.N.Y.), Docket Report).

On February 7, 2017, Synthon informed the Court that it would be moving to transfer the case to the District of Delaware (Ex. F, Feb. 7, 2017 Synthon Letter to Hon. Lorna G. Schofield); the opening brief on the motion to transfer is to be filed February 13, 2017. (Ex. E at D.I. 31).

E. Amneal Has Requested Permission from the E.D.N.Y. to Move to Transfer Its '775 Patent Case to Delaware, and Has Also Filed a Declaratory Judgment Action in Delaware.

On January 25, 2017, Teva sued Amneal in the Eastern District of New York over the

[1] Natco Pharma Ltd. is also a party to the N.D.W. Va. suit.

'775 patent. (*See* Opening Br. at 5; Ex. G, *Teva Pharm. USA, Inc. et al. v. Amneal Pharm. LLC et al.*, C.A. No. 17-cv-00416-JMA (E.D.N.Y.), Docket Report).

That same day, Amneal filed a declaratory judgment action in the District of Delaware, seeking judicial declarations that the '775 patent is invalid and not infringed. (Ex. H, *Amneal Pharm. LLC et al. v. Teva Pharm. USA, Inc. et al.*, C.A. No. 17-cv-00074-GMS (D. Del.), Docket Report). The case is assigned to Judge Sleet. (*Id.*).

In addition, on February 6, 2017, as per the Local Rules of the Eastern District of New York, Amneal asked the Court for permission to move to transfer the case to the District of Delaware (Ex. I, Feb. 6, 2017 Amneal Letter to Hon. Joan M. Azrack).

F. Dr. Reddy's Has Moved to Transfer Its D.N.J. '775 Patent Case to Delaware.

Also on January 25, 2017, Teva sued Dr. Reddy's in this District over the '775 patent. (*See* Ex. J, *Teva Pharm. USA, Inc. et al. v. Dr. Reddy's Labs. et al.*, C.A. No. 17-cv-00517-FLW (D.N.J.), Docket Report).

On January 30, 2017, Dr. Reddy's moved to transfer its case to the District of Delaware. (Ex. J, Docket Report at D.I. 9).

III. ARGUMENT.

A. Momenta Is a Necessary Party, But There Is No Personal Jurisdiction over Momenta in New Jersey.

As explained in Momenta's Motion to Dismiss for Lack of Personal Jurisdiction (D.I. 9), New Jersey does not have personal jurisdiction over Momenta, and thus, it is not proper to proceed with litigation against Momenta in New Jersey. Teva apparently agrees that there is no personal jurisdiction over Momenta in New Jersey, as it chose to fix the jurisdiction problem by voluntarily dismissing Momenta from this suit rather than responding to Momenta's Motion to Dismiss. (D.I. 19).

In addition, as set forth in the February 10, 2017 letter to the Court, Momenta is a necessary party to this action because it has substantial interests in the litigation that cannot be adequately protected if Momenta is absent. (*See* D.I. 40).

As such, because proceeding with this suit in New Jersey would "impair or impede [Momenta's] ability to protect its interests," transfer to the District of Delaware—which has personal jurisdiction over Momenta, and where Momenta filed its declaratory judgment complaint after being dismissed from this action—is heavily favored. *Del. Riverkeeper Network v. Del. River Basin Comm'n*, No. 10-5639-AET, 2011 WL 3882503, at *4 (D.N.J. Sept. 2, 2011).

B. Teva's Assertion that the Delaware Litigation Is Completed Is Wholly Inaccurate; Teva Just Filed Suit in Delaware on December 19, 2016, and Certain Defendants Have Recently Counterclaimed to Add the '775 Patent to that Suit.

Teva argues "there is no judicial economy to be gained by transfer" to Delaware because the technologies of the cases are purportedly "dramatically different" and because "a decision has already been rendered and final judgment entered in the Delaware case, so there is no possibility of consolidation from transfer." (Teva Opp. Br. at 12-13). Indeed, Teva forcefully argues that "the Delaware case" is over, and repeatedly refers to the Delaware litigation in the past tense, *e.g.*:

- The Delaware case, in which trial has been held, final judgment rendered, and notice of appeal filed, dealt with unrelated patents covering dramatically different technologies and involving different issues altogether. (*Id.* at 5).

- A decision has already been rendered and final judgment entered in the Delaware case, so there is no possibility of consolidation from transfer. (*Id.* at 13).

- The court in Delaware has already held a trial and rendered a decision regarding the method of treatment patents, entered judgment, received notice of appeal, and received notice that Plaintiffs seek no further relief. This case, therefore, could not possibly be consolidated with the case against Sandoz in Delaware, and there are no gains in efficiency to be had. (*Id.* at 15).

- As discussed in detail above, there would be no benefit in judicial economy by transferring this case to Delaware because the prior Delaware case regarding method-of-treatment patents . . . has already been decided, eliminating any possibility of consolidation. (*Id.* at 18).

While it is true that the action Teva filed in 2014 ("the Original Delaware Case") is closed, the 2016 Delaware Case is just beginning. Incredibly, Teva makes no mention of the fact that it just filed the 2016 Delaware Case (against all the same defendants) over a fifth GA-related, Orange Book-listed patent—the '874 patent. (*See* Ex. A, 2016 Delaware Case, Docket Report). *A fortiorari*, Teva makes no mention that the 2016 Delaware Case, like this case, is in the pleading stage, nor that just two weeks ago, Teva filed appearances for no fewer than seven attorneys. (*See id*. at D.I. 13). Moreover, Mylan, Sandoz and Momenta recently have filed counterclaims adding the '775 patent to the 2016 Delaware Case. (*See id*. at D.I. 14, 20).

Thus, Teva's claims that consolidation would not be possible in Delaware, and that there is no judicial economy to be gained from transfer to Delaware, are demonstrably false.[2] To the contrary, judicial economy and efficiency would be greatly enhanced by transfer to Delaware, for at least all of the reasons discussed in Sandoz's opening brief and herein.

C. Given That Each Defendant Is Attempting To Transfer Its '775 Patent Case To Delaware For Potential Consolidation, Transfer To Delaware Will Prevent Highly Duplicative Litigation And The Possibility Of Inconsistent Results, As Well As Increase Witness Convenience.

Teva also ignores the fact that it has brought suit over the '775 patent against five different defendants in four different districts—which is the epitome of duplicative and wasteful litigation—and that each defendant is trying to mitigate this wastefulness by moving to transfer its case to the District of Delaware for potential consolidation. *See* Section II (C-F).

More specifically, as noted in Sandoz's opening brief, Teva has not only brought suit over the '775 patent in New Jersey, but has also sued certain of Sandoz's Delaware co-

[2] To the extent Teva's position is that the 2016 Delaware Case was somehow rendered moot by the January 31, 2016 Final Judgment in the Original Delaware Case, Sandoz notes that Teva has not dismissed C.A. No. 16-cv-01267-GMS (D. Del.), nor offered a covenant not to sue for the '874 patent. And as noted above, Teva just entered appearances for seven attorneys in the 2016 Delaware Case. (*See* Ex. A, 2016 Delaware Case, Docket Report, at D.I. 13).

defendants over the '775 patent in three more venues: the Northern District of West Virginia, the Southern District of New York, and the Eastern District of New York.

Moreover, in the time since Sandoz filed its Motion to Transfer on January 26, 2017, all of the other defendants have moved, or have sought leave to move, to transfer their actions to the District of Delaware. (*See* Section II (C-F); Exs. D, F, I, J). As such, it appears that every party except Teva recognizes that simultaneously adjudicating the same patent in five different cases is extremely inefficient and wasteful.

Indeed, it is the antithesis of judicial economy to suggest that, for example, five separate claim construction proceedings should be conducted, rather than one—and this is before one even takes into consideration the very real risk of inconsistent rulings, which do not serve the interests of justice in any way, shape, or form.

And not only will transfer for potential consolidation enhance judicial efficiency—it will also greatly enhance the convenience of witnesses, including Teva's. For example, if the five different '775 patent cases go forward separately, the '775 patent's named inventors will be deposed five times each (once by each Defendant); if the cases are transferred, and then consolidated by the District of Delaware, each inventor will only be deposed once.

Indeed, it is almost axiomatic that where "related lawsuits exist, 'it is in the interests of justice to permit suits involving the same parties and issues to proceed before one court . . . .'" *Liggett Grp. Inc. v. R.J. Reynolds Tobacco Co.*, 102 F. Supp. 2d 518, 537 (D.N.J. 2000) (citation omitted); *see also Platinum Partners Value Arbitrage Fund, L.P. v. TD Bank, N.A.*, No. 10-6457 (ES), 2011 WL 3329087, at *6 (D.N.J. Aug. 2, 2011); *CIBC World Mkts., Inc. v. Deutsche Bank Secs., Inc.*, 309 F. Supp. 2d 637, 651 (D.N.J. 2004).

In sum, Sandoz respectfully submits that the defendants in the various '775 patent cases—Mylan, Synthon, Amneal, and DRL—are correct that transfer of all of the cases to the District Delaware for consolidation is the proper course of action, and Teva's insistence on simultaneously litigating the same patent in four different districts is irrational and untenable.

D. The Multiple '775 Patent Cases Could Be Easily Consolidated if the Delaware Court Chooses to Do So; Teva's Joinder Argument Is a Red Herring.

Teva seemingly argues that the five separate suits should go forward because joinder under 35 U.S.C. § 299 would be impossible. (*See* Teva Opp. Br. at 18-19 ("Furthermore, under 35 U.S.C. § 299, this case could not be consolidated with the case against Amneal, eliminating any possibility of a gain in judicial economy."); *id.* at 19, n.5 ("Hatch Waxman suits are specifically exempted from the prohibition against joinder under 35 U.S.C. § 299, which enabled consolidation of the earlier Delaware case.").

Teva's impossible-joinder argument is a red herring because Sandoz is not suggesting that it and any defendant besides Momenta should be joined. Rather, Sandoz (and all of the other defendants) are suggesting that if the various cases are transferred, they will be prime candidates for consolidation. Moreover, the standards for consolidation and joinder are different—and the standard for consolidation is much more lenient. *See, e.g., In re EMC Corp.*, 677 F.3d 1351, 1360 (Fed. Cir. 2012) ("In exercising its discretion, the district court should keep in mind that even if joinder is not permitted under Rule 20, the district court has considerable discretion to consolidate cases for discovery and for trial under Rule 42 where venue is proper and there is only 'a common question of law or fact.'" (quoting Fed. R. Civ. P. 42(a))). In fact, Fed. R. Civ. P. 42 states that "if actions before the court involve a common question of law ***or*** fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a) (emphasis added). *See also A.S. v. SmithKline Beecham Corp.*, 769 F.3d 204, 212 (3d Cir.

2014) (Rule 42(a) gives the district court "broad power to consolidate cases that share common questions of law or fact." (citation omitted)).

As such, many district courts have consolidated cases for pretrial purposes, finding that pretrial consolidation would be efficient even if the Court ultimately holds a separate trial for each defendant in light of 35 U.S.C. § 299. *See, e.g.*, *Salem Steel N. Am., LLC v. Shanghai Shangshang Stainless Steel Pipe Co.*, No. 08-4827 (DMC), 2009 WL 2169243, at *3 (D.N.J. July 21, 2009) ("Because the Court has found that common questions of fact and law exist between the . . . cases, and that consolidation of these matters would promote judicial efficiency and serve the best interests of all parties, Plaintiff's motion to consolidate is hereby granted."); *Lewis v. Lipocine Inc.*, Nos. 16-4009-BRM-LHG, 16-4067-BRM-LHG, 2016 WL 7042075, at *2 (D.N.J. Dec. 2, 2016) ("Rule 42(a) gives the district court broad powers to consolidate actions involving common questions of law or fact if, in its discretion, such consolidation would facilitate the administration of justice."); *Rohm & Haas Co. v. Mobil Oil Corp.*, 525 F. Supp. 1298, 1310 (D. Del. 1981) (granting consolidation and noting that because "the claims of several of the[ ] patents [at issue in the consolidated actions] overlap" and "all can be traced to a common . . . specification,"); *DietGoal Innovations LLC v. Wegmans Food Mkts., Inc.*, Nos. 13-cv-154, 14-cv-143, 2014 WL 2561222, at *2 (E.D. Va. June 6, 2014) ("[E]ven if the Court ultimately holds four separate trials in light of the America Invents Act, 35 U.S.C. § 299, the Court concludes that it would be efficient to have those trials close in time rather than separated by a year or more, as many pre-trial motions might involve similar issues."); *Norman IP Holdings, LLC v. Lexmark Int'l Inc.*, Nos. 12-cv-508, 11-cv-495, 2012 WL 3307942, at *4 (E.D. Tex. Aug. 10, 2012) (consolidating actions as to all issues, except venue, through pretrial only, and discussing the advantages of pretrial consolidation in a patent infringement action); *Unified Messaging Sols.*, *LLC v. United Online, Inc.*, No. 13-C-00343, 2013 WL 1874211, at *3-7 (N.D. Ill. May 3, 2013) (noting that Rule 42 is more liberal than Rule 20 since consolidation is only for pretrial purposes and the case may be remanded back to the original district court for purposes of trial, stating "Section 299's prohibition on joinder of unrelated defendants based on common acts of infringement does not obviate a transferee court's discretionary ability to order pretrial consolidation in multidistrict litigation"); *Auto-Dril, Inc. v. Canrig Drilling Tech., Ltd.*, No. 15-cv-00096, 2015 WL 12780793, at *4 (W.D. Tex. June 29, 2015) ("[T]he Court finds that 35 U.S.C. § 299 does not preclude this Court from granting [plaintiff's] motion to consolidate under Fed. R. Civ. P. 42(a)."); *In re Bear Creek Techs., Inc.*, *('722) Patent Litig.*, 858 F. Supp. 2d 1375 (J.P.M.L. 2012) (court found [35 U.S.C. § 299] was silent as to pretrial proceedings, ordering consolidation of cases for the purposes of determining transfer under 28 U.S.C. § 1407); *Cellport Sys., Inc. v. BMW of N. Am, L.L.C.*, No. 14-cv-01631-PAB-KLM, 2014 WL 6910293, at *1-2 (D. Col. Dec. 9, 2014) ("Courts have held that § 299 does not prevent the consolidation of cases against accused infringers for pretrial matters. Because the pretrial consolidation plaintiff requests is not prohibited by § 299, [these cases] shall be consolidated for all pretrial matters up to, but not including, the final pretrial conference." (citations omitted)).

Thus, Teva cannot credibly argue that 35 U.S.C. § 299 precludes the Delaware court from consolidating cases for pre-trial purposes and coordinated proceedings.

E. Teva's Other Misleading and Erroneous Points Should Be Given No Weight.

Teva also makes other misleading and erroneous arguments in its Opposition, which should be given no weight.

First, regarding whether the technology here is the same as that in the Original Delaware Case, Teva strangely argues that "***some defendants*** successfully argued to the court in the Delaware case that they should be exempted from producing the entirety of their ANDA, including the manufacturing method, because it did not have any bearing on the issues in the litigation." (Teva Opp. Br. at 8 (emphasis added)). But as Teva well knows—as shown by the fact that it attached hearing transcript pages to its Opposition brief (*see id.* at Weinger Decl. Ex. 6)—Sandoz was not a part of that issue because it produced its entire ANDA, including the manufacturing sections.

Second, Teva's repeated assertions that the technology is different in Delaware is as misleading as it is wrong. The same patent is already pending in at least three separate actions in Delaware, all assigned to Judge Sleet. As for the '874 patent, while it is obviously a different patent, it too involves GA, and there will admittedly be considerable overlap regarding issues and discovery on commercial success, the relevant product market and irreparable harm—all of which Teva seemingly ignores. If that weren't enough, Judge Sleet is already familiar with this subject matter, having presided over numerous GA cases and patents as well as a long trial, and further issued considerable fact findings on GA, the market, and commercial success. It defies logic to suggest, as Teva does, that there is no overlap or efficiencies to be gained by transfer and consolidation.[3]

IV. CONCLUSION.

In sum, transfer of this action to Delaware would serve the interests of justice because it would: (i) prevent duplicative and wasteful litigation; (ii) prevent inconsistent rulings; and (iii) increase witness and party convenience, and Teva's Opposition (which is riddled with important omissions and other misstatements) should be given little weight. As such, Sandoz respectfully requests that this action be transferred to the District of Delaware for potential consolidation.

---

[3] As another example of a misleading yet irrelevant argument, Teva states: "Sandoz's parent company, Novartis, also has its U.S. headquarters in East Hanover, New Jersey." (Teva Opp. Br. at 4 (citing Weinger Ex. 5 (Novartis AG SEC filing) at 86-87)). Teva seems to be saying that either "Novartis Corporation," "Novartis Pharmaceutical Corporation," or "Novartis Services, Inc." is Sandoz Inc.'s "parent company." (*See* Weinger Ex. 5 at 247 (listing these three entities as located in East Hanover, New Jersey)). However, as stated in Sandoz's Rule 7.1 Statement, Sandoz Inc.'s parent company is Novartis AG, which sits in Switzerland. (D.I. 14, Sandoz Inc.'s Fed. R. Civ. P. 7.1 Statement). Moreover, regardless of which Novartis entity Sandoz Inc. is a subsidiary of, Novartis's ties to New Jersey are irrelevant. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918-20 (2011) (holding that Goodyear USA's activities could not be imputed to its subsidiaries for purposes of personal jurisdiction).

Date: February 10, 2017

Respectfully submitted,

HILL WALLACK LLP

Attorneys for Defendants Sandoz Inc. and Momenta Pharmaceuticals, Inc.

By: /s/ Eric I. Abraham

Eric I. Abraham (eabraham@hillwallack.com)
Christina Saveriano (csaveriano@hillwallack.com)
21 Roszel Road
Princeton, NJ 08540
(609) 734-6358 (telephone)

Of Counsel
William A. Rakoczy (wrakoczy@rmmslegal.com)
Deanne M. Mazzochi (dmazzochi@rmmslegal.com)
Rachel Pernic Waldron (rpernicwaldron@rmmslegal.com)
RAKOCZY MOLINO MAZZOCHI SIWIK LLP
6 West Hubbard Street, Suite 500
Chicago, Illinois 60654
(312) 222-6301 (telephone)